COM/LYN/epg

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Decision 01-01-046 January 19, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 3338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

INTERIM OPINION AFFIRMING THE OBLIGATION TO SERVE AND ISSUING TEMPORARY RESTRAINING ORDER

I. Summary

In this interim decision, we are issuing a temporary restraining order (TRO) preventing Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) from refusing to provide adequate service to all of their customers. We issue this TRO to maintain the status quo so as to avoid further degradation of provision of electric service and to avoid the irreparable harm to the public health and safety that would be caused by further degradation of service. We affirm that regulated California utilities must serve

their customers. This requirement, known as the "obligation to serve" is mandated by state law. A utility's obligation to serve is part and parcel of the entire regulatory scheme under which the Commission regulates and controls utilities under the Public Utilities Act.

A bankruptcy filing or the threat of insolvency has no bearing on this aspect of state law. Even utilities that file for reorganization must serve their customers. The public's safety, and the economy's health will be impaired if utilities avoid their obligation to serve. We will take all action necessary to enforce this obligation, while regulating and controlling utilities in a manner consistent with state law, and make the following orders:

II. Background

In Decision (D.) 01-01-018, we adopted an immediate, interim surcharge for PG&E and SCE, subject to refund and adjustment.[1] This surcharge is in effect for 90 days from the effective date of D.01-01-018. As stated in that decision, the increase is a temporary surcharge to improve the ability of the applicants to cover the costs of procuring future energy in wholesale markets that they cannot produce themselves to serve their loads. We determined that this expedited action was necessary to fulfill our statutory obligations to ensure that the utilities can provide adequate service at just and reasonable rates. Emergency hearings were held in late December 2000 and additional hearings are planned for February.

[1] Those customers eligible for the California Alternative Rates for Energy (CARE) program are exempt from this surcharge. The surcharge applies to all other customers, including direct access customers.

In D.01-01-018, we state that we do not yet have the facts to evaluate the utilities' claims of their dire circumstances. We have called for an audit and must await the independent auditors' report. Moreover, we do not have all of the facts related to the parent companies, the utilities, the affiliates, and the flow of funds among these entities. The independent auditors will also consider these questions in their reports. We must consider the overall financial position of the utilities and will do so expeditiously.

Further, in D.01-01-018 we state:

> We are very troubled by the utilities' assumption that ratepayers must bear the burden of significant rate increases without the shareholders sharing in the pain. The utilities and their shareholders have received significant financial benefit from restructuring thus far. For example, PG&E and Edison have each received the benefit of over $2 billion in cash proceeds from rate reduction bonds. As reported in the monthly TCBA reports, PG&E has received over $9 billion in headroom and other transition cost revenues and Edison has received over $7 billion in such revenues. As revealed in cross-examination of PG&E witness Campbell, disbursements from PG&E to the parent company, PG&E Corporation (PG&E Corp.) during the transition period were approximately $9.6 billion. Out of this total, PG&E Corp. issued dividends (both common and preferred stock) of approximately $1.5 billion. PG&E also repurchased stock in the amount of approximately $2.8 billion and retired approximately $2.8 billion of debt. PG&E recognized that market problems were beginning to occur in June of this year, but decided to declare a third-quarter dividend. PG&E did not consider establishing a contingency fund or retaining cash to cushion its risk, because it believed that "its generally conservative financial profile and financing practices would adequately provide cushion against . . . a reasonable range of contingencies." (TR: 409.)
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> Now that such contingencies are outside the reasonable range, the utilities turn to the ratepayers for relief. It is decidedly not business

> as usual and the utilities need to realize that ratepayers are not the only answer to their dilemma. For example, parties have only just begun to explore the ability of the utilities' holding companies to participate in the solution. While the cash on hand in the holding companies may be insufficient when compared with the going-forward costs of procuring power, we are convinced that other potential solutions should be explored. (*Id.* mimeo. at pp. 15-16.)

III. Discussion

Since mid-June, we have seen prices in the wholesale electricity market skyrocket to staggering levels as a result of the severe dysfunction of the California wholesale electricity market. As a result, several deleterious consequences have occurred. Ratepayers in San Diego Gas & Electric Company's (SDG&E) service territory saw their electric bills double and triple over the summer. PG&E and Edison have defaulted on payments. Stage 1, 2, and 3 emergencies have occurred with alarming regularity, and indeed, rolling blackouts occurred in Northern California on January 17 and 18, 2001. The Governor, Legislature, and this agency are actively seeking solutions to the energy crisis confronting us. The Federal Energy Regulatory Commission (FERC), despite finding that wholesale electric rates are not just and reasonable, chose to lift price caps, and to refrain from devising a remedy under Section 206(a) of the Federal Power Act (16 USC Section 824e(a)),[2] while making a

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[2] This statute provides in pertinent part:

> Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable

Footnote continued on next page

number of other changes that add to the complexity and uncertainty of the commercial relationships. As we explained in D.01-01-018, these actions have left California's utilities and ratepayers prey to wholesale electricity sellers who immediately quadrupled and quintupled their prices above already unprecedented levels.

In the hearings we held on financial issues in December and early January, a representative of Edison indicated that in the event that Edison could not purchase power in excess of the 7 cents per kilowatt-hour available in retail revenues to pay for power, Edison would request to be relieved of its obligation to serve. (TR: 755)

On January 18, we received a declaration from Gary Heath, Executive Director of the Electricity Oversight Board (EOB) regarding PG&E's assertion to the Deputy Director Raymond Hart of the California Department of Water Resources (CDWR). Mr. Hart informed Mr. Heath that PG&E stated that beginning January 20, 2001, PG&E would schedule only its own generation and would not purchase additional needed generation to serve remaining customer load. Mr. Heath verified this assertion with PG&E Vice President Dan Richard at 2:15 p.m. on January 18. Mr. Richard confirmed that PG&E would only serve its customers through its own generation, and therefore would not schedule the resources secured by the CDWR for PG&E's remaining load. Mr. Heath states that PG&E cannot rely on its own generation to meet its obligations to serve all the customers in its service territory. If PG&E does not obtain additional

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rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

generation, reliability of service to PG&E customers will be "seriously jeopardized." (Declaration of Gary Heath, Attachment 1.)

Also on January 18, we received affidavits from Terry Winter, the President and Chief Executive of the California Independent System Operator (ISO) and Ziad Alaywan, Managing Director of the ISO. Mr. Winter declares that Harold Ray, a senior vice president of Edison, stated in a 4:15 p.m. telephone call that Edison plans to continue to act a scheduling coordinator for all of Edison's non-direct access customers. Mr. Ray stated that there is not an intent to abandon any of its customers. At 4:20 p.m., Mr. Winter had a telephone conversation with Mr. Richard of PG&E and Bruce Worthington, General Counsel of PG&E. Mr. Richard stated that PG&E would not change its scheduling responsibilities at this time and that there was a misunderstanding of the scheduling coordination responsibilities regarding the CDWR's role as a conduit to serve some of PG&E's customers. Mr. Winter then declares that: "Mr. Richards [sic] advised me that while the company does not intend to change its scheduling coordination role for all its non-direct access customers at this time, the company will continue to review its scheduling coordination responsibilities to its non-direct access customers as the situation unfolds." (Affidavit of Terry Winter, Attachment 2.)

Mr. Alaywan declares that he participated in two conference calls with personnel from PG&E, Edison, and CDWR, which took place at approximately 8:00 a.m. and 2:00 p.m. on January 18, 2001. During the morning call, all participants agreed that PG&E and Edison would continue to act as scheduling coordinators for all their non-direct access customers, even though some customers would be served by generation provided by CDWR. PG&E and Edison agreed to undertake an inter-scheduling coordinator trade with CDWR in

accordance with prescribed ISO processes. During the afternoon call, a PG&E director indicated that it no longer wished to act a scheduling coordinator for non-direct access customers served by generation provided by CDWR. The PG&E director stated that "PG&E does not wish to shirk its responsibilities, but stated again that another entity should serve as scheduling coordinator for customers served by CDWR generation." (Affidavit of Ziad Alaywan, Attachment 3.)

We also received a declaration, dated January 18, 2001, from Peter Garris, employed by the CDWR as Chief Water and Power Dispatcher. Mr. Garris confirms the 2:00 p.m. January 18 conference call described by Mr. Alaywan. Mr. Garris specifically states that Claudia Grief, Director of PG&E Scheduling, informed the participants that PG&E would not be the scheduling coordinator for load that could not be served by its own resources. Mr. Garris also participated in a 4:45 p.m. conference call with Ms. Grief, PG&E Vice President Roy Kuga, other CDWR staff, and individuals from the ISO and Power Exchange. Mr. Garris confirms that during this call, Mr. Kuga indicated that PG&E would not take scheduling coordinator trades from CDWR after Saturday, January 20, 2001, for energy acquired by CDWR for PG&E's load that is not served by PG&E's own generation. Mr. Garris states that PG&E lacks sufficient resources to meet its native load without securing energy from other sources; if this is left unresolved, PG&E's customers will experience adverse reliability problems.

IV. Obligation to Serve

State law clearly requires utilities to serve their customers, and a threatened bankruptcy filing or threat of insolvency does not change that obligation. Similarly, the financial distress of one utility cannot be used as an

excuse by another utility to avoid its obligation to serve. As we stated in D.01-01-018, we have a duty to assure that the utilities are able to continue to procure and deliver power for their customers. This duty applies even if the utilities under our jurisdiction have filed for bankruptcy or are on the brink of petitioning for such relief. Our basic obligation under the Public Utilities Act is to assure the people of California adequate service at reasonable rates. Section 451[3] provides, in relevant part:

> All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful. Every public utility shall furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment and facilities as are necessary to promote the safety, health, comfort and convenience of its patrons, employees, and the public.

We therefore issue this decision to affirm that PG&E and Edison must continue to provide reliable, safe, and adequate service to all Californians at just and reasonable rates, including continuing to enter into and maintain any current and future low-cost contracts to procure power. Our actions are consistent with the Legislature's intent, as stated in §§ 330(g), 330(h) and 391(a), part of Assembly Bill (AB) 1890 (Stats. 1996, Ch. 854), which provide in relevant part:

> 330(g): Reliable electric service of utmost importance to the safety, health, and welfare of the state's citizenry and economy.

[3] All statutory references are to the Public Utilities Code, unless otherwise noted.

> 330(h): It is important that sufficient supplies of electric generation will be available to maintain the reliable service to the citizens and business of the state.
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> 391(a): Electricity is essential to the health, safety, and economic well-being of all California consumers.

In addition, §§ 761-788 give the Commission broad authority to issue orders controlling the equipment, practices and facilities of regulated utilities. For example, § 761 gives the Commission authority to order the "service, or methods to be observed, [or] furnished" by California Utilities. Section 761 also provides that utilities must furnish their commodities, or render their services according to the rules and orders of the Commission, so long as a customer makes "proper demand and tender of rates."

In relevant part, § 762 requires that:

> Whenever the commission, after a hearing, finds that additions, extensions, repairs, or improvements to, or changes in, the existing plant, equipment, apparatus, facilities, or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that new structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements, or changes be made or such structures be erected in the manner and within the time specified in the order.

Furthermore, § 768 provides, in relevant part:

> The commission may, after a hearing, require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote and safeguard the health and safety of its employees, passengers, customers, and the public.

Section 770 provides, in relevant part:

> The commission may, after a hearing:
>
> Ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements, or service to be furnished, imposed, observed, and followed by all electrical, gas, water, and heat corporations.

Section 701 gives the Commission power to undertake all necessary actions to properly regulate and supervise California utilities. In Consumers Lobby Against Monopolies v. Public Utilities Commission (1979) 25 Cal.3d 891, 905, the California Supreme Court declared:

> The commission is a state agency of constitutional origin with far-reaching duties, functions and powers. (Cal. Const., Art. XII §§ 1-6.) The Constitution confers broad authority on the commission to regulate utilities, including the power to fix rtes, establish rules, hold various types of hearings, award reparation, and establish its own procedures (*Id.*, §§ 2, 4, 6.) …
>
> Pursuant to this grant of power, the Legislature enacted Public Utilities Code section 701, conferring on the commission expansive authority to '*do all things*, whether specifically designated in [the Public Utilities Act] *or addition thereto*, which are necessary and convenient' in the supervision and regulation of every public utility in California. (Italics added.) the commission's authority has been liberally construed. (Consumers Lobby Against Monopolies at 905.)

The California Supreme Court has further found that "the commission often exercises equitable jurisdiction as an incident to its express duties and authority. For example, the commission may issue injunctions in aid of jurisdiction specifically conferred upon it." (*Id.* at 907.)

Therefore, under our plenary powers and until this crisis is resolved, we intend to closely monitor and supervise the actions and expenditures of the investor-owned utilities under our regulation to ensure that service is provided.

While we are dismayed that the energy crisis has escalated to the point that such tight control by the State is required, we intend to exercise the required control. We recognize that hearings are required and will provide for these, as we discuss below. Today we issue a temporary restraining order in order to avoid irreparable harm to public health and safety, to maintain the status quo, and to ensure that PG&E and Edison continue to schedule generation through the ISO to serve all customers with adequate, reliable service, consistent with their obligation to serve.

A TRO serves the purpose of preventing the actions of a party from causing irreparable harm to another party, pending a hearing on the need for a preliminary injunction. We are issuing this TRO on our motion and on an ex parte basis because we are convinced that if adequate service were not maintained, great or irreparable harm would result before the matter could proceed to a hearing. A TRO has the same force and effect as a preliminary injunction and remains in effect until an order can be issued granting or denying a preliminary injunction.

We therefore order PG&E and Edison to appear at an evidentiary hearing scheduled for January 29, 2001 at 10:00 a.m. to show cause as to why a preliminary injunction should not be issued.

We expect the utilities to fully comply with our orders. We have previously stated that nothing in AB 1890 relieves the existing utilities of their obligation to serve all customers in their service territories under their respective tariffs (D.97-09-047, mimeo. at p. 44.). In PG&E's holding company decision, D.98-04-068, the Commission specifically found that: "The capital requirements of PG&E, as determined to be necessary and prudent to meet the obligation to serve or to operate the utility in a prudent and efficient manner, shall be given

first priority by PG&E Corporation's Board of Directors." (*Id.*, at 98.) The Commissions' holding company decision clearly affirms the continuing obligation to serve.

V. Unforeseen Emergency Situation

Government Code § 11125.5 and Rule 81 of our Rules of Practice and Procedure allow the Commission to take action more quickly than would be permitted if advance publication were made on the regular meeting agenda. An example of such an unforeseen emergency situation are those activities that severely impair or threaten to severely impair public health or safety.

As underscored by Governor Gray Davis, who declared a state of emergency, this is such a situation. If PG&E and Edison were to rely only on their own generation to meet their obligations to serve all customers in their service territory, reliability of service would be severely undermined.

Draft decisions are generally subject to a 30-day review and comment period (§ 311(g)(1)). However, § 311(g)(2) provides that this 30-day period may be reduced or waived in an unforeseen emergency situation. We have determined that this situation exists and therefore waive the public review and comment period on this draft decision. (See also Rules 77.7(f)(1), 77.7(f)(9) and 81.)

Findings of Fact

1. On January 3, 2001, in final oral argument before the Commission on the proposed decision of ALJ Minkin in this proceeding, attorney Henry Weissmann, representing Edison, stated that if the Commission's decision prevented Edison from obtaining additional financing, it would not be able to buy power to meet its customers needs. He requested the Commission relieve Edison of the

obligation to serve to the extent it cannot purchase power in excess of the 7 cents per kilowatt hour available in retail revenues to pay for power.

2. In D.01-01-018, we state that the interim surcharge of 1 cent per kilowatt hour, subject to refund and adjustment, is adopted to improve the ability of PG&E and Edison to cover the costs of procuring future energy in wholesale markets that they cannot produce themselves to serve their loads.

3. In D.01-01-018, we find that the utilities understood the risks AB 1890 and electric restructuring imposed. In addition, while the cash on hand in the holding companies may be insufficient when compared with the going-forward costs of procuring power, we are convinced that other potential solutions should be and are currently being explored.

4. The evidence obtained at hearing in this proceeding does not support a finding that PG&E or Edison cannot continue to provide service unless there are substantial rate increases. Instead, we called for an audit and must await the independent auditors' report. Moreover, we do not have all of the facts related to the parent companies, the utilities, the affiliates, and the flow of funds among these entities. The independent auditors will also consider these questions in their reports.

5. On January 18, we received a declaration from Gary Heath, Executive Director of the EOB regarding PG&E's assertion to the Deputy Director Raymond Hart of the CDWR.

6. Mr. Hart informed Mr. Heath that PG&E stated that beginning January 20, 2001, PG&E would schedule only its own generation and would not purchase additional needed generation to serve remaining customer load. Mr. Heath verified this assertion with PG&E Vice President Dan Richard at 2:15 p.m. on January 18, 2001.

7. Mr. Heath states that PG&E cannot rely on its own generation to meet its obligations to serve all the customers in its service territory. If PG&E does not obtain additional generation, reliability of service to PG&E customers will be jeopardized.

8. We also received affidavits on January 18, 2001 from Terry Winter, the President and Chief Executive of the ISO and Ziad Alaywan, Managing Director of the ISO.

9. Mr. Winter declares that Harold Ray, a senior vice president of Edison, stated in a 4:15 p.m. telephone call on January 18, 2001, that Edison plans to continue to act as scheduling coordinator for all of Edison's non-direct access customers. Mr. Ray stated that there is not an intent to abandon any of its customers.

10. At 4:20 p.m. on January 18, 2001, Mr. Winter had a telephone conversation with Mr. Richard of PG&E and Bruce Worthington, General Counsel of PG&E. Mr. Richard stated that PG&E would not change its scheduling responsibilities at this time and that there was a misunderstanding of the scheduling coordination responsibilities regarding the CDWR's role as a conduit to serve some of PG&E's customers.

11. Mr. Winter declares that Mr. Richards then advised the ISO that PG&E "will continue to review its scheduling coordination responsibilities to its non-direct access customers as the situation unfolds."

12. Mr. Alaywan declares that he participated in two conference calls with personnel from PG&E, Edison, and CDWR, which took place at approximately 8:00 a.m. and 2:00 p.m.

13. During the morning call, all participants agreed that PG&E and Edison would continue to act as scheduling coordinators for all their non-direct access

customers, even though some customers would be served by generation provided by CDWR. PG&E and Edison agreed to undertake an inter-scheduling coordinator trade with CDWR in accordance with prescribed ISO processes.

14. During the afternoon call, Mr. Alaywan states that a PG&E director indicated that PG&E no longer wished to act as a Scheduling Coordinator for non-direct access customers served by generation provided by CDWR.

15. The same participants took part in a 3:00 p.m. conference call on January 18, 2001, in which Edison now indicated that it was taking the same position as PG&E as to scheduling coordinator responsibilities. Mr. Ziad understands from conversations with Mr. Winter that PG&E and Edison have currently indicated that they will serve as scheduling coordinators for all their non-direct access customers in accordance with the process agreed to during the January 18, 2001 morning call.

16. The January 18, 2001 declaration of Peter Garris of the CDWR confirms the 2:00 p.m. phone call described by Mr. Alaywan. Mr. Garris also participated in a 4:45 p.m. conference call with Ms. Grief Director of PG&E Scheduling, PG&E Vice President Roy Kuga, other CDWR staff, and individuals from the ISO and Power Exchange.

17. During this call, Mr. Garris confirms that Mr. Kuga indicated that PG&E would not take scheduling coordinator trades from CDWR after Saturday, January 20, 2001, for energy acquired by CDWR for PG&E's load that is not served by PG&E's own generation.

18. Mr. Garris states that PG&E lacks sufficient resources to meet its native load without securing energy from other sources; if this is left unresolved, PG&E's customers will experience adverse reliability problems.

Conclusions of Law

1. State law clearly requires utilities to serve their customers, and a threatened bankruptcy filing or threat of insolvency does not change that obligation.

2. As we stated in D.01-01-018, we have a duty to assure that the utilities are able to continue to procure and deliver power for their customers. This duty applies even if the utilities under our jurisdiction have filed for bankruptcy or appear to be threatened with insolvency. Our basic duty under the Public Utilities Act is to assure the people of California adequate electric service at just and reasonable rates.

3. Under Public Utilities Code sections 451, 761, 762, 768, and 770, PG&E and Edison have an obligation to provide full and adequate service to all of their customers, including continuing to enter into and maintain any current and future low-cost contracts to procure power.

4. Electricity is essential to the health, safety, and economic well-being of all California consumers.

5. Customers of PG&E and Edison would suffer irreparable harm if the utilities did not maintain adequate service to all customers.

6. In order to ensure full and adequate service to all customers of PG&E and Edison, the Commission should issue a Temporary Restraining Order preventing the utilities from refusing to provide adequate service to all of their customers. This restraining order should specifically prevent the utilities from refusing to act as scheduling coordinator with the California Independent System Operator to serve all of their non-direct access customers.

7. A TRO serves the purpose of preventing the actions of a party from causing irreparable harm to another party, pending a hearing on the need for a preliminary injunction.

8. We are issuing this TRO on our own motion and an ex parte basis because we are convinced that if adequate service were not maintained, great or irreparable harm would result before the matter could proceed to a hearing.

9. A TRO has the same force and effect as a preliminary injunction and remains in effect until an order can be issued granting or denying a request for a preliminary injunction.

10. A hearing should be held expeditiously to require PG&E and Edison to show cause as to why a preliminary injunction should not be granted.

11. Nothing in AB 1890 relieves the existing utilities of their obligation to serve all customers in their service territories under their respective tariffs.

12. Consistent with Government Code § 11125.5 and Rule 81, immediate action is required because PG&E and Edison's potential failure to serve all non-direct access customers is an unforeseen emergency situation that threatens to severely impair public heath and safety.

13. Because this is an unforeseen emergency situation, the 30-day public review and comment period is waived, consistent with § 311(g)(2).

14. This order should be effective today, so that a temporary restraining order may be issued expeditiously.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) shall continue to provide full and adequate service to all their customers.

2. PG&E and Edison are temporarily restrained from refusing to provide adequate service to all customers, including refusing to act as scheduling

coordinators to serve all their non-direct access customers with the California Independent System Operator.

3. PG&E and Edison shall appear for an evidentiary hearing on January 29, 2001 at 10:00 AM at the Commission's San Francisco Courtrooms to show cause why the Commission should not proceed to issue a preliminary injunction and to take legal action against PG&E and Edison for their actions.

This order is effective today.

Dated January 19, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
CARL W. WOOD
Commissioner

Commissioner Richard A. Bilas is necessarily absent.

I will file a dissent.

/s/ HENRY M. DUQUE
Commissioner

ATTACHMENT 1
DECLARATION

I, GARY HEATH, declare:

1. I am employed by the Electricity Oversight Board as the Executive Director. I have personal knowledge of the facts stated herein except as to matters stated upon information and belief, and as to those matters, I believe them to be true. If called upon to testify, I could and would competently do so.

2. Today, I received a telephone at about approximately 2:00 p.m. from Deputy Director Raymond Hart of the California Department of Water Resources.

3. Mr. Hart informed me that starting Saturday, January 20, 2001, Pacific Gas and Electric Company ("PG&E") told him that it would only schedule its own generation, and would not purchase additional needed generation to serve remaining customer load.

4. I verified this information from Mr. Hart by contacting PG&E Vice President Dan Richard, at approximately 2:15 p.m. today. Mr. Richard confirmed that PG&E would only serve its customers through its own generation, and therefore would not schedule the resources secured by the California Department of Water Resources for PG&E's remaining load.

5. PG&E cannot rely on its own generation to meet its obligations to serve all the customers in its service territory. PG&E must obtain additional generation; otherwise, reliability of service to PG&E customers will be seriously jeopardized.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of January, 2001, at Sacramento, California.

/S/ GARY HEATH
Gary Heath

(END OF ATTACHMENT 1)

ATTACHMENT 2

AFFIDAVIT OF TERRY WINTER

I, Terry Winter, declare as follows:

1. I am the President and Chief Executive of the California Independent System Operator. I have personal knowledge of the matters set forth below and can testify thereto if called as a witness.

2. At approximately 4:15 on January 18, 2001, I had a telephone conversation with Harold Ray, a senior vice president of Southern California Edison Company (SCE) concerning that company's plans for acting as scheduling coordinator for all SCE non-direct access customers. Mr. Ray advised me that SCE is planning to continue to act as scheduling coordinator for all SCE non-direct access customers. Mr. Ray further advised me that any confusion on this point was due to some uncertainty as to how responsibilities for acting as scheduling coordinator would be allocated between the California Department of Water Resources and SCE. He advised me that there was no intent on the part of SCE to "abandon" any of its customers.

3. At approximately 4:20 on January 18, 2001, I had a conversation with Dan Richards, a senior executive of Pacific Gas and Electric Company (PG&E) and Bruce Worthington, General Counsel of PG&E, concerning that company's plans for acting as scheduling coordinator for all PG&E non-direct access customers. Mr. Richards advised me that PG&E would not change its scheduling coordinator responsibilities at this time. Mr. Richards further advised me that any confusion on this point was due to a misunderstanding of the scheduling coordination responsibilities of PG&E in light of the Governor's statement regarding the role of the California Department of Water Resources as a conduit to serve some of PG&E customers. Mr. Richards advised me that while the company does not intend to change its scheduling coordination role for all its non-direct access customers at this time, the company will continue to review its scheduling coordination responsibilities to its non-direct access customers as the situation unfolds.

Declared under penalty of perjury by:

/S/ TERRY WINTER
Terry Winter

(END OF ATTACHMENT 2)

ATTACHMENT 3
AFFIDAVIT OF ZIAD ALAYWAN

I, Ziad Alaywan, declare as follows:

1. I am a Managing Director at the California Independent System Operator. I have personal knowledge of the matters set forth below and can testify thereto if called as a witness.
2. On January 18, 2001, I participated in two conference calls with personnel from Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and the California Department of Water Resources (CDWR), which took place at approximately 8:00 AM and 2:00 PM. These conference calls related to the mechanics for scheduling of non-direct access customers of PG&E and SCE.
3. During the morning call it was agreed that PG&E and SCE would act as scheduling coordinators for all their non-direct access customers, although some such customers would be served by generation provided by CDWR. PG&E and SCE would undertake an inter scheduling coordinator trade with CDWR to account for the generation to be provided by CDWR, in accordance with the ISO process for inter scheduling coordinator trades, which requires confirmation from both scheduling coordinators entering into a transaction.
4. During the 2:00 PM call, a PG&E director indicated that PG&E did not wish to act as scheduling coordinator for non-direct access customers served by generation provided by CDWR. This director stated that another entity should be used to act as scheduling coordinator for these customers. The CDWR representative asked whether PG&E was shirking its responsibilities as a utility. The PG&E director stated that PG&E does not wish to shirk its responsibilities, but stated again that another entity should serve as scheduling coordinator for customers served by CDWR generation. Since it appeared that the entities on the phone had reached an impasse, we agreed to try speaking again at 3:00 PM.
5. After the 2:00 PM call, I called another PG&E representative to get confirmation of the PG&E position. I was told that this person could not help me. I therefore informed the ISO President and Chief Executive Officer, Terry Winter, of the development.
6. The group (representatives from PG&E, SCE, CDWR and myself) reconvened for a call at 3:00 PM. During this call, the SCE representative indicated that it was taking the same position as PG&E as to scheduling coordination responsibilities, in light of issues that needed to be resolved, including for example the $100 penalty for underscheduling.
7. I understand from conversations with Mr. Winter that at this time PG&E and SCE have indicated that they will serve as scheduling coordinators for all their non-direct access customers in accordance with the process agreed to during the 8:00 AM call this morning.

Declared under penalty of perjury by:

/s/ ZIAD ALAYWAN

Ziad Alaywan

(END OF ATTACHMENT 3)

ATTACHMENT 4
DECLARATION

I, PETER GARRIS, declare:

1. I am employed by the California Department of Water Resources ("CDWR") as Chief Water and Power Dispatcher. I have personal knowledge of the facts stated herein except as to matters stated upon information and belief, and as to those matters, I believe them to be true. If called upon to testify, I could and would competently do so.

2. At approximately 2:00 p.m. today, I participated in a teleconference meeting with representatives from Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company, the California Independent System Operator ("ISO") and the California Power Exchange ("PX"). During this meeting, Claudia Grief, Director of PG&E Scheduling, informed us that PG&E would not be taking "scheduling coordinator to scheduling coordinator trades" from CDWR to PG&E, as of Friday, January 19, 2001, for energy that would flow on Saturday, January 20, 2001. She also informed us that PG&E would not be the scheduling coordinator for load that could not be served by its own resources.

3. At approximately 4:45 p.m., I participated in a teleconference meeting with PG&E Vice President Roy Kuga and Ms. Grief. The meeting was attended by other CDWR staff, and individuals from the ISO and the PX. During this meeting, Mr. Kuga indicated that PG&E would not take "scheduling coordinator to scheduling coordinator trades" from CDWR after Saturday, January 20, 2001, for energy acquired by CDWR for PG&E's load that is not being served by PG&E's own generation.

4. PG&E lacks sufficient generating resources to meet its native load without securing energy from other sources, including CDWR. If the resource deficiency is unresolved, this will result in adverse reliability problems for PG&E customers.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of January, 2001, at Sacramento, California.

___/s/ PETER GARRIS
Peter Garris

(END OF ATTACHMENT 4)

Commissioner Duque, dissenting:

These are clearly stressful times. The Commission, and each Commissioner, wishes to do whatever we can to reduce the rolling blackouts that Californians are now facing. Nevertheless, I cannot support today's decision of the majority that adopts a Temporary Restraining Order (TRO) against SCE and PG&E.

A careful review of each of the affidavits attached to today's order of the majority belies the need for the issuance of a TRO. The affidavits document an understandable confusion on the part of SCE and PG&E concerning the new role of the California Department of Water Resources in buying power. More importantly, the affidavits show an underlying commitment by SCE and PG&E to honor their obligation-to-serve Californians. In particular, consider attachment 2, point 2 "there is no intent on the part of SCE to 'abandon' any of its customers." Furthermore, consider attachment 3, point 7 ". . . at this time, PG&E and SCE have indicated that they will serve as scheduling coordinators for all their non-direct access customers. . ." The affidavits demonstrate that there is no threat by either utility to deny their obligation-to-serve Californians. If there were such a threat by utilities to abrogate their obligation to serve, I would support the order of the majority. The evidence before the Commission, however, does not justify the issuance of a TRO.

It is also wise to ask what the adoption of this order will accomplish. The obligation-to-serve is already clear in California law, and the TRO adds nothing to that obligation. Moreover, the order may simply poison the atmosphere between government and the utilities, thereby making communications even more difficult in this time of crisis. Thus, the order of the majority is unwise, with potential risks and costs exceeding any benefits.

Finally, in the few minutes before this meeting, I called Gordon Smith, the CEO of PG&E. He stated that PG&E has no intention to abrogate its obligation-to-serve. I also called John Bryson, the Chairman of SCE, who said the same thing. These verbal commitments only confirm my reading of the affidavits and my conclusion that there is no need for today's order.

For these reasons, I respectfully dissent from today's order of the majority.

___/s/ HENRY M. DUQUE_____

Henry M. Duque

January 19, 2001

San Francisco, California